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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 ANNETTE GUZMAN,) NO. CV 11-04196 SS
12)
12 Plaintiff,)
13)
13 v.)
14) **MEMORANDUM DECISION AND ORDER**
14 MICHAEL J. ASTRUE,)
15 Commissioner of the Social)
15 Security Administration,)
16)
16 Defendant.)
17 _____)

18 **I.**
19 **INTRODUCTION**
20

21 Annette Guzman ("Plaintiff") brings this action seeking to overturn
22 the decision of the Commissioner of the Social Security Administration
23 (hereinafter the "Commissioner" or the "Agency") denying her
24 applications for Social Security Income benefits ("SSI") and Disability
25 Insurance Benefits ("DIB"). On May 26, 2011, Plaintiff filed a
26 complaint (the "Complaint") commencing the instant action. On October
27 3, 2011, the Commissioner filed an Answer to the Complaint (the
28 "Answer") and a certified administrative record ("AR"). Plaintiff and

1 the Commissioner each filed a memorandum of points and authorities
2 ("Plaintiff's Memo." and "Commissioner's Memo.") in support of their
3 positions on November 2, 2011 and December 5, 2011 respectively. On
4 December 20, 2011, Plaintiff filed a Reply to the Commissioner's
5 Memorandum. The parties consented, pursuant to 28 U.S.C. § 636(c), to
6 the jurisdiction of the undersigned United States Magistrate Judge. For
7 the reasons stated below, the decision of the Agency is AFFIRMED.

8
9 **II.**

10 **PROCEDURAL HISTORY**

11
12 Plaintiff applied for SSI on January 28, 2008 and DIB on January
13 29, 2008, alleging a disability onset date of January 1, 2007. (AR 142-
14 53). The Agency denied Plaintiff's initial application for SSI and DIB
15 on May 9, 2008, (AR 106-110), and denied reconsideration on September
16 26, 2008. (AR 113-17). Plaintiff then requested a hearing, (AR 10-11),
17 which was held on November 4, 2009 before an Administrative Law Judge
18 ("ALJ"), (AR 27-64), where Plaintiff appeared with counsel and
19 testified. (AR 35-56). On December 21, 2009, the ALJ denied benefits.
20 (AR 12-23). The Appeals Council denied Plaintiff's request for review
21 of the ALJ's decision on March 16, 2011, (AR 1-5), making the ALJ's
22 decision the final decision of the Agency. Plaintiff then filed the
23 instant action.

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1 On October 11, 2007, it was noted that Plaintiff had diabetes that
2 was uncontrolled with complication. (AR 291). Dr. Carranza adjusted
3 Plaintiff's medication for her diabetes and advised her that she may
4 need insulin and that she needs to exercise regularly and lose weight.
5 (Id.). Dr. Carranza prescribed Cozaar for her hypertension. (Id.).
6

7 On November 12, 2007, it was noted that Plaintiff's diabetes was
8 uncontrolled with complication. (AR 278). Dr. Carranza recommended
9 that Plaintiff continue her "current regimen" and he would see her in
10 one month. (Id.)
11

12 On December 12, 2007, it was noted that Plaintiff had "malaise and
13 fatigue," diabetes that was uncontrolled with complication and that she
14 was a smoker. (AR 258). For her diabetes, Dr. Carranza recommended
15 that her medication be decreased and "if sugars still low then
16 [decrease] due to hypoglycemia. . . will cont monitor for now." (Id.)
17

18 On January 7, 2008, it was noted that Plaintiff's diabetes was
19 "likely better controlled with recent change in diet" and her malaise
20 and fatigue were "resolving." (AR 236). As for her smoking, the doctor
21 noted: "continue to decrease amount. adviced (sic) that eventually
22 needs to completely quit. previously prescribed welbutrin but did not
23 take." (AR 236). The doctor observed that Plaintiff "overall feels
24 better" and that Plaintiff agreed to decrease her tobacco use. (AR
25 368).
26

27 On March 12, 2008, the records reflect observations regarding
28 constipation, obesity, diabetic microalbuminuria, cellulitis and that

1 Plaintiff was a smoker. (AR 354-56). It was also noted that
2 Plaintiff's diabetes was controlled, and that she should continue her
3 current medication regimen. (AR 355). The doctor observed that
4 Plaintiff lost a "significant" amount of weight through diet and
5 exercise and had "better mobility." (AR 354). The doctor encouraged
6 Plaintiff to continue her current "weight loss/exercise/lifestyle
7 changes." (AR 355). Plaintiff's hypertension was also noted as being
8 controlled. (Id.).
9

10 On November 21, 2008, it was noted that Plaintiff had controlled
11 diabetes, essential hypertension, shoulder region pain and low back
12 pain. (AR 391). With respect to Plaintiff's essential hypertension,
13 Dr. Carranza increased her medication Cozaar. (Id.). For her shoulder
14 and back pain, Plaintiff was prescribed Naproxen. (AR 391).
15

16 On December 26, 2008, Dr. Carranza noted that Plaintiff was gaining
17 weight and eating more. (AR 420). Plaintiff reported that she was
18 "aware that this is really bad for her diabetes." (Id.) Dr. Carranza
19 increased her diabetes medication and emphasized that Plaintiff needed
20 to concentrate on losing weight. (Id.).
21

22 On January 5, 2009, Plaintiff was diagnosed with impingement
23 syndrome of the shoulder. (AR 408). She was given a shoulder cortisone
24 injection, "which helped." (AR 412).
25

26 On January 6, 2009, Plaintiff presented with back pain. (AR 411).
27 Plaintiff reported that her blood pressure had been high, she had "not
28 really [been] following [her] diet as [she] should," and that her

1 "sugars are better than before with addition of glyburide." (AR 412).
2 Dr. Carranza ordered an MRI of her lumbar spine for her low back pain.
3 (AR 413). He further noted that her diabetes was controlled. (Id.).
4

5 On March 3, 2009, Plaintiff underwent an MRI of her lumbar spine
6 without contrast. (AR 387-88). As to Plaintiff's L4-5, the MRI
7 revealed a:

8
9 3 mm degenerative anterior spondylolisthesis of L4 with
10 respect to L5. There is bilateral facet arthropathy and
11 bilateral synovial cysts. The left-sided synovial cyst
12 measures 7.3 mm and extends into the left lateral recess
13 impinging the left L5 nerve root. The right-sided synovial
14 cyst extends into the right posterolateral canal without
15 obvious lateral recess stenosis, measuring 7.7 mm. The
16 combination of findings of the anterolisthesis, facet
17 arthropathy, and synovial cyst results in overall moderately
18 severe canal stenosis. The neural foramina are patent.

19
20 (AR 388).
21

22 On March 26, 2009, Dr. Carranza noted that Plaintiff's MRI revealed
23 spinal stenosis. (AR 456). He also observed that Plaintiff "had
24 appointment with pmr. Did not follow up." (Id.). Plaintiff's physical
25 examination revealed mostly normal findings. (AR 456). Plaintiff's
26 musculoskeletal exam reveal no edema. (Id.). The doctor also noted
27 that Plaintiff's diabetes was controlled and for her hypertension, he
28

1 prescribed Cozaar and Lisinopril. (AR 457). The doctor again counseled
2 Plaintiff to stop smoking. (AR 456).

3
4 On May 7, 2009, Plaintiff presented with chronic low back pain.
5 (AR 452). The physical examination notes state "Patient in no acute
6 distress. Heavysset. Lumbar spine: Inspection shows no misalignment/
7 asymmetry. There is no spine tenderness to palpation in the spine.
8 Range of motion is limited with pain by 20% flexion extension bilateral
9 lateral bending. Assessment of stability: normal. Straight leg raise
10 is negative bilaterally. Patrick's is negative with painless passive
11 hip range of motion." (AR 453). Plaintiff's gait was intact and she
12 was able to walk on her toes and heels. (Id.). For her back pain,
13 Plaintiff was given "5 trigger point injections" and was encouraged to
14 lose weight and do water exercise. (Id.).

15
16 **B. State Agency Physicians' Opinions**

17
18 On May 8, 2008, after reviewing Plaintiff's medical file, state
19 agency physician Dr. Cornelius C. Scott assessed Plaintiff as being able
20 to lift twenty pounds occasionally and ten pounds frequently, stand
21 and/or walk for at least two hours, sit about six hours, unlimited push
22 and/or pull abilities, occasional climbing, balancing, stooping,
23 kneeling, crouching and crawling but no climbing on ladders, ropes or
24 scaffolds. (AR 331-32). Plaintiff has no manipulative, visual,
25 communicative or environmental limitations. (AR 332-33).

26
27 On September 26, 2008, after reviewing Plaintiff's medical file,
28 state agency physician Dr. C. Friedman determined that other than there

1 being an improvement in Plaintiff's sitting, "there is not significant
2 change and affirm the ALJ [prior] decision."¹ (AR 381).

3
4 **C. Examining Consultative Examiners' Opinions**

5
6 On April 23, 2008, Dr. Jagvinder Singh, who is Board Certified in
7 Internal Medicine, performed an Internal Medicine Consultation. (AR
8 324-29). Plaintiff's chief complaints were diabetes mellitus, high
9 blood pressure, high cholesterol, leg and weight problems. (AR 324).
10 Plaintiff reported that has no problems with dressing, grooming and
11 bathing herself. (Id.). She is able to cook, do dishes and laundry but
12 also asserts that she cannot do much "due to shortness of breath."
13 (Id.).

14
15 After a physical, musculoskeletal, range of motion, neurological
16 and cranial nerves examination, Dr. Singh diagnosed Plaintiff with
17 morbid obesity, bilateral knee osteoarthritis, diabetes mellitus with
18 peripheral neuropathy, and hypertension, well controlled with
19 medication. (AR 325-28). He thereafter opined that Plaintiff is able
20 to stand and walk for two hours with breaks, sit without restriction,
21 should use a single point cane for prolonged walking and standing, able
22 to lift and carry 20 pounds occasionally and 10 pounds frequently. (AR
23

24 ¹ On November 17, 2007, Plaintiff's prior application for DIB and
25 SSI was denied. (AR 89-97). The ALJ determined that Plaintiff had the
26 residual functional capacity to "perform sedentary exertional level work
27 with avoidance of prolonged standing and walking, sitting for no more
28 than 20-30 minutes at a time, no more than two hours of sitting in an
eight-hour workday, occasional stooping, kneeling, and crawling, and no
repetitive squatting, kneeling, stooping or climbing of stairs and
ladders." (AR 93).

1 328). Plaintiff will have difficulty with crawling, kneeling and
2 bending. (Id.) Finally, she has no manipulative and environmental
3 restrictions. (Id.).
4

5 On December 7, 2009, Dr. John Simmonds, an Orthopedic Surgeon,
6 performed an orthopedic examination. (AR 501-05). He diagnosed
7 Plaintiff with "discogenic disease of the lumbosacral spine status post
8 microdiscectomy currently with multilevel degenerative disc disease with
9 stable anterolisthesis of L4-L5," "myofascial muscular pain of the lower
10 back" and "posttraumatic arthritic changes of the right knee." (AR
11 504). Based on the examination, clinical history and objective
12 findings, he opined that Plaintiff could lift and carry approximately
13 50 pounds occasionally and 25 pounds frequently, stand and walk four
14 hours in an eight-hour work day and does not require the use of an
15 assistive ambulatory device. (AR 505). Plaintiff has no sitting
16 limitations and postural limitations such as bending, kneeling,
17 stooping, crawling and crouching can be performed on a frequent basis.
18 (Id.). Plaintiff can perform overhead activities and has full use of
19 her hands for fine and gross manipulative movements. (Id.).
20

21 **D. Plaintiff's Testimony**
22

23 Plaintiff testified that she did not work in 2007 because she could
24 not stand and sit for long periods of time. (AR 37). She can stand and
25 sit for about 20 minutes each. (Id.).
26

27 Plaintiff's previous occupations have included being a nurse
28 assistant, interpreter, taking care of the elderly and delivering

1 flowers. (AR 40-46). She stated that she could no longer deliver
2 flowers because her back hurt and her legs did not support her. (AR
3 46). She is also unable to work as an interpreter because she "can't
4 sit that long, for six hours or four hours or three hours or two hours."
5 (Id.).

6
7 Plaintiff testified that she is unable to work because of her
8 diabetes. (AR 47). Her diabetes "usually goes up and down, it flexes
9 every time" and if she does not control her diabetes, she has to "go
10 into dialysis." (Id.). She takes medication for her diabetes, but has
11 not been prescribed insulin. (AR 47-48). She also takes medication for
12 her high blood pressure. (AR 48).

13
14 Plaintiff further testified that she is unable to work because of
15 the pain in her back, legs and arms. (AR 47). She takes Vicodin and
16 Motrin for her back pain. (Id.).

17
18 Plaintiff testified that she lives alone, does not drive but takes
19 the bus. (AR 49-50). In response to the ALJ's question regarding how
20 she spends her days, Plaintiff replied:

21
22 I get up in the morning. I have breakfast. I take my
23 pills. I usually try to make my bed. I go outside and water
24 my plants. I have like five plants that I have to water. I
25 go back inside. I lay down for a while. I try to figure out
26
27
28

1 what I want to make for dinner and lunch. I get in to have
2 a shower. And that's about it.

3
4 (AR 50).

5
6 Plaintiff also watches a little television. (Id.) She goes
7 shopping when she gets her food stamps, but she has a friend go with
8 her. (Id.). She is "semi" able to keep her house straight but she has
9 friends that help her clean while she makes them dinner. (AR 51-52).
10 She tries to go to the park with her friends where she will either just
11 sit or have a barbeque. (Id.). Plaintiff confirmed that all she does
12 all day is "just watch[] a little TV and lay[] down." (AR 52).

13
14 Plaintiff is 5'4" and weighs 240 pounds. (AR 53). She used to
15 weight 370 pounds but two years ago due to a "cut on [her] leg," she
16 started to lose a lot of weight and within six months she lost close to
17 100 pounds. (Id.). Her knees are very weak and her shoulders hurt.
18 (AR 54). She had a cortisone shot in her shoulder which helped. (AR
19 54-55). Her pain level during the day is "an eight to nine" on a scale
20 of ten. (AR 55). She takes Vicodin for her pain but that only helps
21 "for like three or four hours and then I take Tylenol Arthritis. I just
22 take Motrin, Motrin 800 milligrams and sometimes I take them twice [or
23 three times] a day." (Id.).

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1 IV.

2 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

3

4 To qualify for disability benefits, a claimant must demonstrate a

5 medically determinable physical or mental impairment that prevents her

6 from engaging in substantial gainful activity² and that is expected to

7 result in death or to last for a continuous period of at least twelve

8 months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing

9 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant

10 incapable of performing the work she previously performed and incapable

11 of performing any other substantial gainful employment that exists in

12 the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir.

13 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

14

15 To decide if a claimant is entitled to benefits, an ALJ conducts

16 a five-step inquiry. 20 C.F.R. § 416.920. The steps are:

17

18 (1) Is the claimant presently engaged in substantial gainful

19 activity? If so, the claimant is found not disabled.

20 If not, proceed to step two.

21 (2) Is the claimant's impairment severe? If not, the

22 claimant is found not disabled. If so, proceed to step

23 three.

24 (3) Does the claimant's impairment meet or equal the

25 requirements of any impairment listed at 20 C.F.R. Part

26

27 ² Substantial gainful activity means work that involves doing

28 significant and productive physical or mental duties and is done for pay or profit. 20 C.F.R. § 416.910.

1 404, Subpart P, Appendix 1? If so, the claimant is
2 found disabled. If not, proceed to step four.

3 (4) Is the claimant capable of performing h[er] past work?
4 If so, the claimant is found not disabled. If not,
5 proceed to step five.

6 (5) Is the claimant able to do any other work? If not, the
7 claimant is found disabled. If so, the claimant is
8 found not disabled.

9
10 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d
11 949, 953-54 (9th Cir. 2001); 20 C.F.R. § 416.920(b)-(g)(1).

12
13 The claimant has the burden of proof at steps one through four, and
14 the Commissioner has the burden of proof at step five. Bustamante, 262
15 F.3d at 953-54. If, at step four, the claimant meets her burden of
16 establishing an inability to perform the past work, the Commissioner
17 must show that the claimant can perform some other work that exists in
18 "significant numbers" in the national economy, taking into account the
19 claimant's RFC, age, education and work experience. Tackett, 180 F.3d
20 at 1100; 20 C.F.R. § 416.920(g)(1). The Commissioner may do so by the
21 testimony of a vocational expert or by reference to the Medical-
22 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,
23 Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel, 240
24 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional
25 (strength-related) and nonexertional limitations, the Grids are
26 inapplicable and the ALJ must take the testimony of a vocational expert.
27 Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000).

V.

THE ALJ'S DECISION

The ALJ employed the five-step sequential evaluation process and concluded that Plaintiff was not disabled. (AR 15-23). At step one, the ALJ determined that Plaintiff had not engaged in substantial gainful activity since January 1, 2007. (AR 17). At step two, the ALJ found that Plaintiff had severe impairments of diabetes mellitus type II with associated neuropathy, hypertension, multi-level degenerative disc disease of the back, and knee pain status post right medial meniscectomy. (Id.).

At step three, the ALJ determined that Plaintiff did not have an impairment that meets or equals a listed impairment. (AR 18). At step four, the ALJ found that Plaintiff could perform light work, and was able to "occasionally lift and carry 20 pounds and frequently 10 pounds, would be able to stand and walk 2 hours in an 8-hour workday, but not continuously, no limitations with sitting; would be able to occasionally climb ramps and stairs, balance, stoop, kneel, crouch and crawl, but would be precluded from climbing ladders, ropes and scaffolds." (Id.).

At step five, the ALJ relied on a vocational expert's ("VE") testimony. (AR 22-23). The VE testified that Plaintiff had the past relevant work as a deliverer which was an "unskilled job generally performed at medium level and actually performed at light level;" interpreter, which was a "skilled job generally performed and actually performed by [Plaintiff] at sedentary level" and nurse assistant which was a "semi-skilled job generally performed and actually performed at

1 medium level." (AR 23). In comparing Plaintiff's residual functional
2 capacity ("RFC") with the physical and mental demands of her past
3 relevant work, the ALJ then determined that Plaintiff could perform her
4 past relevant work as an interpreter as actually and generally performed
5 at the sedentary level but "would not be able to perform her past
6 relevant work as a deliverer or a nurse assistant because the physical
7 demands of these jobs exceeded the [Plaintiff's RFC]." (AR 22).
8 Accordingly, the ALJ found that Plaintiff could return to her past
9 relevant work as an interpreter and was not disabled. (Id.).

11 VI.

12 STANDARD OF REVIEW

13
14 Under 42 U.S.C. § 405(g), a district court may review the
15 Commissioner's decision to deny benefits. The court may set aside the
16 Commissioner's decision when the ALJ's findings are based on legal error
17 or are not supported by substantial evidence in the record as a whole.
18 Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v.
19 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).

20
21 "Substantial evidence is more than a scintilla, but less than a
22 preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence
23 which a reasonable person might accept as adequate to support a
24 conclusion." Id. To determine whether substantial evidence supports
25 a finding, the court must "'consider the record as a whole, weighing
26 both evidence that supports and evidence that detracts from the
27 [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny
28 v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can

1 reasonably support either affirming or reversing that conclusion, the
2 court may not substitute its judgment for that of the Commissioner.
3 Reddick, 157 F.3d at 720-21.

4
5 **VII.**
6 **DISCUSSION**

7
8 **A. The ALJ Gave Clear And Convincing Reasons In Rejecting Plaintiff's**
9 **Pain Testimony**

10
11 Plaintiff contends that the ALJ failed to articulate clear and
12 convincing reasons for rejecting her pain testimony. (Plaintiff's Memo.
13 at 3-9). Specifically, Plaintiff complains that, contrary to the ALJ's
14 conclusion, the objective medical evidence did support her subjective
15 complaints as to her back pain, diabetes and hypertension. (Id. at 4-6,
16 8). Plaintiff also contends that the ALJ's conclusion that her
17 treatments have been routine and conservative is based on the ALJ's own
18 speculation. (Id. at 6). Lastly, she complains that the ALJ
19 inaccurately described her daily activities. (Id. at 7-8). The Court
20 disagrees.

21
22 Whenever an ALJ's disbelief of a claimant's testimony is a critical
23 factor in a decision to deny benefits, as it is here, the ALJ must make
24 explicit credibility findings. Rashad v. Sullivan, 903 F.2d 1229, 1231
25 (9th Cir. 1990). Unless there is affirmative evidence showing that a
26 claimant is malingering, the ALJ's reasons for rejecting the claimant's
27 testimony must be "clear and convincing." Parra v. Astrue, 481 F.3d
28 742, 750 (9th Cir. 2007); Lester v. Chater, 81 F.3d 821, 834 (9th Cir.

1 1995). As long as Plaintiff offers evidence of a medical impairment
2 that could reasonably be expected to produce pain, the ALJ may not
3 require the degree of pain to be corroborated by objective medical
4 evidence. Bunnell v. Sullivan, 947 F.2d 341, 346-47 (9th Cir. 1991) (en
5 banc); Smolen, 80 F.3d at 1282.

6
7 The ALJ may, however, reject Plaintiff's testimony regarding the
8 severity of her symptoms if he points to clear and convincing reasons
9 for doing so. See Smolen, 80 F.3d at 1283-84. To determine whether
10 Plaintiff's testimony regarding the severity of her symptoms is
11 credible, the ALJ may consider, among other things, the following
12 evidence: (1) ordinary techniques of credibility evaluation, such as
13 the claimant's reputation for lying, prior inconsistent statements
14 concerning the symptoms, and other testimony by the claimant that
15 appears less than candid; (2) unexplained or inadequately explained
16 failure to seek treatment or to follow a prescribed course of treatment;
17 and (3) the claimant's daily activities. Id. at 1284. If the ALJ's
18 credibility finding is supported by substantial evidence in the record,
19 the court may not engage in second-guessing. Thomas v. Barnhart, 278
20 F.3d 947, 959 (9th Cir. 2002).

21
22 The ALJ determined that Plaintiff is credible "to the extent she
23 would experience some low back and knee pain due to her degenerative
24 anterior spondylolisthesis, and medial meniscus tear in her right knee
25 with heavy lifting or prolonged periods of walking and/or standing," and
26 therefore reduced Plaintiff's RFC to accommodate those limitations. (AR
27 21). However, the ALJ did not find Plaintiff's allegations that "she
28

1 is incapable of all work activity to be credible because of significant
2 inconsistencies in the record as a whole." (AR 22).

3
4 Here, the ALJ gave clear and convincing reasons for discounting
5 Plaintiff's allegations of subjectively disabling symptoms. (AR 19-22).
6 Specifically, the ALJ found that the medical evidence, conservative
7 treatment and Plaintiff's daily activities fail to support the alleged
8 severity of Plaintiff's symptoms and that Plaintiff retains the "ability
9 despite her impairments to perform work activities with the limitations
10 set forth above." (AR 22).

11
12 **1. Objective Medical Evidence And Conservative Treatment**

13
14 a. Diabetes And Hypertension

15
16 First, the ALJ found that the objective evidence is inconsistent
17 with Plaintiff's alleged disabling symptoms of her diabetes and
18 hypertension. (AR 20). The ALJ noted that contrary to Plaintiff's
19 contention that her diabetes and hypertension were uncontrolled, the
20 medical evidence indicated otherwise. (Id.).

21
22 Although there is evidence in Plaintiff's earlier treatment notes
23 that her diabetes was "uncontrolled, with complication," her most recent
24 office visits suggest that her diabetes was well-controlled with
25 medication. (See AR 457 - March 26, 2009, AR 413 - January 6, 2009, AR
26 391 - November 21, 2008, AR 355 - March 12, 2008). Further, the record
27 supports the ALJ's conclusion that Plaintiff's diabetes improved with
28 diet and exercise. (AR 20, 236, 354, 420); see Warre v. Comm'r of Soc.

1 Sec. Admin., 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments that can
2 be controlled effectively with medication are not disabling for the
3 purpose of determining eligibility for SSI benefits."). The record
4 also indicates that Plaintiff was not following the recommended advice
5 of her doctors to diet and exercise to better control her diabetes. For
6 instance, on December 26, 2008, Plaintiff reported that she was gaining
7 weight and eating more and that she was "aware that this is really bad
8 for her diabetes," and Dr. Carranza emphasized that Plaintiff needed to
9 concentrate on losing weight to control her diabetes. (AR 20). Yet,
10 on January 9, 2009, Plaintiff reported that she was "not really
11 following diet as should" (AR 412) and on March 26, 2009, it was noted
12 that Plaintiff was not exercising. (AR 456). Earlier, however, when
13 Plaintiff was following her doctors' advice, she lost a "significant
14 amount of weight" through diet and exercise. (AR 354).

15
16 Similarly, there is no evidence that Plaintiff's hypertension was
17 uncontrolled. Plaintiff's treatment notes indicate that her
18 hypertension was either well-controlled or controlled through
19 adjustments of her medication, Cozaar. (AR 20, 292, 303, 355, 391, 413,
20 421, 446, 457).

21
22 The ALJ also cited conservative treatment for Plaintiff's diabetes
23 and hypertension to reject her testimony. (AR 20); see also Parra, 481
24 F.3d at 751 (holding that "conservative treatment" is sufficient to
25 discount a claimant's testimony regarding the severity of an
26 impairment). Plaintiff was prescribed medication for her diabetes and
27 hypertension, however, it does not appear that she received any more
28

1 extreme treatment or great increases in her medication over time.³ (AR
2 236, 244, 258, 278, 292-93, 303, 355, 391, 413, 420-21, 446, 457). For
3 example, the ALJ noted that Plaintiff was not prescribed insulin for her
4 diabetes. (AR 20). Further, Plaintiff's medication use for her
5 diabetes and hypertension suggested to the ALJ that her medications have
6 been effective in controlling her diabetes and hypertension. (Id.).
7 The consistent use of specific medications also suggests that Plaintiff
8 did not suffer from debilitating side effects from the medications.
9 Lastly, as discussed above, the medical records show that Plaintiff's
10 doctors recommended that she diet and exercise because it "contributed
11 to a better control of her diabetes." (AR 20, 236, 354, 420); Warre,
12 439 F.3d at 1006. Thus, the ALJ properly found that Plaintiff's
13 conservative treatment and improvement with medication were convincing
14 reasons to reject her testimony.

15
16 b. Chronic Low Back Pain
17

18 The ALJ noted that Plaintiff was credible to the extent she would
19 experience some low back pain, and her RFC was reduced to accommodate
20 that limitation. (AR 21). However, the ALJ did not find Plaintiff's
21 complaints credible to the extent Plaintiff was incapable of all work
22 activity because it was inconsistent with the objective medical
23 evidence, particularly a March 3, 2009 MRI that revealed a "slight facet
24 hypertrophy, but no evidence of canal or foraminal stenosis." (AR 20).
25 Plaintiff correctly notes that the ALJ "misread the MRI" and that the
26 MRI does in fact reveal "severe canal stenosis." (Plaintiff's Memo. at
27

28 ³ Plaintiff reported that she was diagnosed with diabetes mellitus
and hypertension more than ten years ago. (AR 324).

1 5). However, the Court concludes that even if the ALJ erred in her
2 precise reading of the MRI record, any error was harmless, because the
3 remaining medical records overwhelmingly support the ALJ's conclusions.
4

5 In his orthopedic examination of Plaintiff, Dr. Simmonds
6 specifically noted that he reviewed the March 3, 2009 MRI. (AR 501).
7 He noted that the MRI revealed "overall moderate severe canal stenosis."
8 (Id.). Based on this evidence, as well his review of Plaintiff's
9 medical history and his examination of Plaintiff, Dr. Simmonds assessed
10 Plaintiff with a less restrictive RFC than the one imposed by the ALJ.
11 Dr. Simmonds opined that Plaintiff could lift and carry 50 pounds
12 occasionally and 25 pounds frequently and could stand and walk for four
13 hours. (AR 505). Dr. Simmonds assessed no sitting limitations and
14 postural limitations such as bending, kneeling, stooping, crawling and
15 crouching could be done frequently. (Id.). Under these circumstances,
16 even assuming the ALJ fully credited the MRI findings, it is unlikely
17 that she would have given Plaintiff a more restrictive RFC. Moreover,
18 the ALJ specifically incorporated appropriate limitations as to
19 Plaintiff's back into her RFC findings. Accordingly, any error in the
20 ALJ's consideration of the MRI report was harmless. (AR 21). See
21 Carmickle v. Comm'r of Soc. Sec. Admin., 533 F.3d 1155, 1162 (9th Cir.
22 2008) ("So long as there remains 'substantial evidence supporting the
23 ALJ's conclusions' and the error 'does not negate the validity of the
24 ALJ's ultimate . . . conclusion,' such is deemed harmless and does not
25 warrant reversal.") (quoting Batson v. Comm'r of Soc. Sec. Admin., 359
26 F.3d 1190, 1197 (9th Cir. 2004)); Burch v. Barnhart, 400 F.3d 676, 679
27 (9th Cir. 2005) ("A decision of the ALJ will not be reversed for errors
28 that are harmless.").

1 The ALJ also cited conservative treatment to reject Plaintiff's
2 pain testimony regarding her back pain. Parra, 481 F.3d at 751.
3 Specifically, the ALJ noted that Plaintiff's treatment for her back had
4 been "essentially routine and conservative in nature" and she had "not
5 undergone any invasive surgery or other treatment for her pain." (AR
6 20-21). The medical records support the ALJ's conclusion. Although
7 Plaintiff was prescribed Vicodin and Naproxen and on one occasion was
8 injected with lidocaine for her back pain, the medical records indicate
9 that she did not receive any more extreme treatment. Instead, the
10 medical records show that her doctors used conservative care to manage
11 her pain, and recommended water exercise and weight loss. (AR 391,
12 453). There is evidence that Plaintiff's physician discussed the option
13 of surgery for her back but only if she developed lower limb symptoms
14 or if her low back pain did not improve. (AR 453). Thus, this could
15 reasonably suggest that Plaintiff's pain was not overly severe.
16 Carmickle, 533 F.3d at 1162. The conservative care to manage
17 Plaintiff's back pain was supported by substantial evidence, and not
18 based on mere speculation as Plaintiff suggests.

19 20 **2. Daily Activities**

21
22 The ALJ stated that Plaintiff's "high level of daily functioning
23 is not typical of someone in debilitating pain and is therefore
24 inconsistent with [Plaintiff's] subjective complaints." (AR 20). To
25 support this finding, the ALJ cited Plaintiff's admission that her
26 activities of daily living included, "waking up, making her bed,
27 watering her plants, watching TV, grocery shopping, and cooking. She
28 occasionally has to lie down and rest for awhile. She sometimes visits

1 with her friends and goes to the park." (Id.). Plaintiff contends that
2 the ALJ did not accurately describe her daily activities. (Plaintiff's
3 Memo. at 6-7).

4
5 After reviewing the record, the Court finds that the ALJ's
6 paraphrasing of Plaintiff's testimony regarding her daily activities is
7 generally accurate.

8
9 First, the ALJ noted that Plaintiff goes grocery shopping. (AR
10 20). However, Plaintiff alleges that she "relies on a friend to help
11 her go grocery shopping." (Plaintiff's Memo. at 7). At the hearing,
12 Plaintiff testified that she goes shopping "when I get my food stamps,
13 but I have a friend come with me." (AR 50). Plaintiff's testimony
14 could reasonably be interpreted to suggest that Plaintiff has a friend
15 go with her grocery shopping and not necessarily that she relies on her
16 friend to go grocery shopping. This Court must defer to the ALJ's
17 interpretation of the evidence when it is reasonably based upon the
18 record. Batson, 359 F.3d at 1193. Moreover, even if it is true that
19 Plaintiff relies on a friend to shop, her remaining activities
20 demonstrate that she is capable of her past relevant work.

21
22 Plaintiff alleges that she is "unable to perform household chores,
23 and again relies on a friend in exchange for dinner." (Plaintiff's
24 Memo. at 7). At the hearing, in response to the ALJ's question as to
25 whether she can keep her house straight, Plaintiff responded, "Semi; I
26 mean, it's not -- I have a friend that, that comes over and I make him,
27 I make them dinner and they help me clean my bathroom --" (AR 50). This
28 could be reasonably interpreted as suggesting that Plaintiff is able to

1 do some of her household chores but receives help from her friends in
2 exchange for dinner, not that she is unable to perform any household
3 chores. Batson, 359 F.3d at 1193.

4
5 Next, the ALJ noted that Plaintiff "sometimes visits with her
6 friends and goes to the park." (AR 20). However, Plaintiff alleges
7 that she "attempts to go to the park, which indicates that she has some
8 difficulty in that regard unlike the ALJ's summary of this particular
9 activity." (Plaintiff's Memo. at 7). At the hearing, Plaintiff
10 testified that she has friends and "I try to go the park [with them]."
11 (AR 51). The ALJ asked Plaintiff what she does at the park, and she
12 responded, "We just sit there, really. We don't do any -- like we
13 usually get together with some friends and barbecue or something and I'm
14 there a couple hours and then I -- take a chair for me." (AR 51-52).
15 The Court finds that the ALJ's interpretation of Plaintiff's testimony
16 was reasonable. Batson, 359 F.3d at 1193.

17
18 Moreover, Plaintiff's statements to Dr. Singh completely
19 corroborate the ALJ's finding that Plaintiff engaged in significant
20 daily activities that were inconsistent with her alleged pain.
21 Plaintiff reported to Dr. Singh that she has "no problems with dressing
22 grooming and bathing herself" and "she is able to do cooking, dishes and
23 laundry but she cannot do much due to the shortness of breath." (AR
24 324).

25
26 Plaintiff cites Reddick v. Chater, 157 F.3d 715, 722 (9th Cir.
27 1998), for the proposition that a claimant should not be penalized for
28 attempting to live a normal life and should not be required to "vegetate

1 in a dark room" in order to receive benefits. (Plaintiff's Memo. at 7).
2 While Plaintiff is correct with respect to her citation to the court's
3 observations in Reddick, the court also observed in that case that the
4 ALJ may consider in her credibility assessment whether "the level of
5 activity [is] inconsistent with Claimant's claimed limitations"
6 Id. (emphasis added). Here, the ALJ did follow Reddick, by considering
7 the extent of Plaintiff's daily activities and comparing this to
8 Plaintiff's testimony of totally debilitating pain.

9
10 Thus, the Court concludes the ALJ provided clear and convincing
11 reasons for rejecting Plaintiff's testimony regarding her claim of
12 complete disability.

13
14 **B. The ALJ Properly Evaluated Plaintiff's Mental Impairment**

15
16 Plaintiff claims that the ALJ failed to properly evaluate her
17 mental impairment. (Plaintiff's Memo. at 9-11). The Court disagrees.

18
19 Where there is evidence of a mental impairment that allegedly
20 prevents the plaintiff from working, the Agency has supplemented the
21 five-step sequential evaluation process with additional regulations.⁴
22 Maier v. Comm'r of Soc. Sec. Admin., 154 F.3d 913, 914-15 (9th Cir.
23 1998) (citing 20 C.F.R. § 416.920a) (per curiam). When a plaintiff
24 raises a colorable claim of mental impairment, the ALJ must follow a

25
26 ⁴ These additional steps are intended to assist the ALJ in
27 determining the severity of mental impairments at steps two and three.
28 The mental RFC assessment used at steps four and five of the evaluation
process, on the other hand, require a more detailed analysis. Social
Security Ruling ("SSR") 98-8p, 1996 WL 374184 at * 4.

1 "special technique" to evaluate the plaintiff's limitations. 20 C.F.R.
2 § 416.920a (2006) ("[W]e must follow a special technique at each level
3 in the administrative review process"). The ALJ must evaluate the
4 plaintiff's claims and incorporate the pertinent findings and
5 conclusions into her decision. Id. ("The decision must show the
6 significant history, including examination and laboratory findings, and
7 the functional limitations that were considered in reaching a conclusion
8 about the severity of the mental impairment(s). The decision must
9 include a specific finding as to the degree of limitation in each of the
10 functional areas."). If the claimant has a medically determinable
11 impairment, the ALJ must "rate the degree of functional limitation
12 resulting from the impairment(s)" for the four broad functional areas:
13 activities of daily living; social functioning; concentration,
14 persistence and pace; and episodes of decompensation. 20 C.F.R.
15 § 416.920a(b)(2), (c)(3).

16
17 An ALJ's failure to follow the required procedure mandates remand
18 only if the claimant has a "colorable claim of a mental impairment."
19 Cf. Gutierrez v. Apfel, 199 F.3d 1048, 1051 (9th Cir. 2002), superseded
20 by regulation as stated in Selassie v. Barnhart, 203 Fed. App'x 174, 175
21 (9th Cir. 2006) (holding that, where there is a colorable claim of
22 mental impairment, the ALJ must strictly follow regulations for
23 evaluating mental impairment); see also Gunderson v. Astrue, 371 Fed.
24 App'x 807, 808 n.1 (9th Cir. 2010) ("Although Gutierrez dealt with the
25 prior version of section 404.1520a, the current version, although
26 different, imposes similar obligations on the ALJ."); Moore v. Barnhart,
27 405 F.3d 1208, 1214 (11th Cir. 2005) ("We thus join our sister circuits
28 in holding that where a claimant has presented a colorable claim of

1 mental impairment, the social security regulations require the ALJ to
2 complete a PRTF and append it to the decision, or incorporate its mode
3 of analysis into [her] findings and conclusions."); but see Rabbers v.
4 Comm'r of Social Sec. Admin., 582 F.3d 647, 658 (6th Cir. 2009) (finding
5 the failure to strictly follow mental impairment regulations was
6 harmless error). A colorable claim is one which is not "wholly
7 insubstantial, immaterial, or frivolous." Cassim v. Bowen, 824 F.2d
8 791, 795 (9th Cir. 1987).

9
10 Following the technique outlined in Section 416.920a(c) and (e),
11 however, is only required for medically determinable impairments. See
12 20 C.F.R. § 416.920a(b). The claimant must prove the existence of a
13 physical or mental medically determinable impairment by providing
14 medical evidence consisting of signs, symptoms, and laboratory findings.
15 20 C.F.R. § 404.908; see also Ukolov v. Barnhart, 420 F.3d 1002, 1005
16 (9th Cir. 2005) (noting that the existence of a medically determinable
17 physical or mental impairment may only be established with objective
18 medical findings) (citing SSR 96-4p, 1996 WL 374187 at *1-2). Symptoms
19 are a claimant's own description of his or her impairment, and alone are
20 not enough to establish a mental impairment. Signs include observable
21 psychological abnormalities and must be medically demonstrable phenomena
22 and laboratory findings must be shown through medically acceptable
23 laboratory techniques. 20 C.F.R. § 416.928.

24
25 Here, the record contains no evidence of "pertinent symptoms,
26 signs, and laboratory findings" that Plaintiff suffered from depression
27 within the relevant time period. Although "Depression, Major,
28 Recurrent, in Partial Remission" appears as part of Plaintiff's "Problem

1 List" in each office visit print out, the Court agrees with Respondent
2 that this list is simply a log of problems Plaintiff has had in her
3 medical history. (See 219, 226, 233, 246, 253, 258, 264, 266, 271, 274,
4 279, 283, 287, 299, 304, 313, 340, 426, 428). Other than these
5 references and Plaintiff's own statement in her disability report that
6 she was taking Amitriptyline for depression (AR 206), there is little
7 evidence that Plaintiff suffered from or was treated for depression.
8 Moreover, neither of these references demonstrates that Plaintiff had
9 depression that "significantly limits [her] physical or mental ability
10 to do basic work activities," 20 C.F.R. § 416.920(c), or that the
11 depression lasted "a continuous period of at least 12 months." Id.
12 § 416.909. Indeed, a progress note dated December 15, 2006 states
13 "Depression mostly ok off rx (advised return to pscyh if needed)," and
14 there is no evidence in the record that Plaintiff ever returned for
15 needed or additional psychological or psychiatric assistance. (AR 315).
16 The evidence fails to show a "colorable claim of a mental impairment."

17
18 The Court also notes that Plaintiff's applications for benefits
19 fail to mention any symptoms related to a mental impairment, let alone
20 that she suffered any mental impairment within the relevant time period
21 other than the isolated reference that she was taking Amitriptyline.
22 (See AR 106, 113, 172, 175-76, 192-95, 204-07). Also notable is the
23 fact that at the hearing, neither Plaintiff nor her attorney, who had
24 an opportunity to examine Plaintiff, mentioned that Plaintiff suffered
25 from depression although the ALJ specifically asked what further
26 impairments prevented Plaintiff from working and what prescribed
27 medications she was taking. (AR 47-49, 52-56).

1 Under these circumstances, the Court finds that Plaintiff failed
2 to meet her burden of proof on this issue. See Bray v. Comm'r of Soc.
3 Sec. Admin., 554 F.3d 1219, 1222 (9th Cir. 2009) ("The burden of proof
4 is on the claimant at steps one through four"). In sum, because
5 there is no colorable claim of a mental impairment, the ALJ was not
6 required to consider that claim and was not required to follow the
7 process outlined 416.920a(c) and (e) nor evaluate the severity of
8 Plaintiff's mental limitations.

9
10 **VIII.**

11 **CONCLUSION**

12
13 Consistent with the foregoing, and pursuant to sentence four of 42
14 U.S.C. § 405(g),¹ IT IS ORDERED that judgment be entered AFFIRMING the
15 decision of the Commissioner. IT IS FURTHER ORDERED that the Clerk of

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27 ¹ This sentence provides: "The [district] court shall have power
28 to enter, upon the pleadings and transcript of the record, a judgment
affirming, modifying, or reversing the decision of the Commissioner of
Social Security, with or without remanding the cause for a rehearing."

1 the Court serve copies of this Order and the Judgment on counsel for
2 both parties.

3
4 DATED: December 27, 2011

5
6 /S/
7 SUZANNE H. SEGAL
8 UNITED STATES MAGISTRATE JUDGE

9 **THIS MEMORANDUM IS NOT INTENDED FOR PUBLICATION NOR IS IT INTENDED**
10 **TO BE INCLUDED IN OR SUBMITTED TO ANY ONLINE SERVICE SUCH AS WESTLAW OR**
11 **LEXIS.**
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